NEO SEO THUN & ANOR. v. NG PENG HUI

[O.C.J. (Choor Singh J.) May 23, 1975]
[Singapore — Civil Suit No. 820 of 1974]

Tort — Negligence — Person killed as a result of motor car accident — Claim by personal representatives for the benefit of the estate and for the benefit of dependant of deceased — Whether deduction should be made for value of property inherited — Damages to dependant — Deduction of pecuniary benefit accruing to dependant from death of deceased — Civil Law Act (Cap. 30), ss. 8 and 12.

In this case the personal representatives of the estate of the deceased brought an action for damages for the benefit of his estate and also for the benefit of the dependant. The deceased had been killed in a road accident and liability for his death had been admitted by the defendant. The dispute was as to the dependancy claim of the widow. It appeared that the deceased owned a house which was used as the family house and the widow would be entitled to a half-share of the estate. It was therefore argued that she was not entitled to anything for dependancy.

Held: (1) no deduction should be made for the dwelling house, furniture and other personal effects because the widow had the use of these things before the death of the deceased. The fact that she has become part-owner of the property was not a benefit to be set off against the loss to her resulting from her husband's death;

(2) as the widow was the only dependant in this case, the amount which should be deducted from the compensation to be awarded to her as the dependant under section 12 of the Civil Law Act was the amount of her share of the award under section 8 of the Civil Law Act.

Cases referred to:-

(1) *Heatley* v. *Steel Co. of Wales Ltd.* [1953] 1 All E.R. 489.
(2) *Bishop* v. *Cunard White Star Co. Ltd.* [1950] P. 240.
(3) *Daniels* v. *Jones* [1961] 3 All E.R. 24, 31.
(4) *Kassam* v. *Kampala Aerated Water Co. Ltd.* [1965] 2 All E.R. 875.
(5) *Davies* v. *Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.

CIVIL SUIT.

Mohamad bin Abdullah for the plaintiffs.

James Chen for the respondents.

Choor Singh J.: The two plaintiffs brought this action as the administratrix and co-administrator respectively of the estate of one Ng Joo Chiang deceased for the benefit of his estate and for the benefit of a dependant of the deceased.

The first plaintiff Neo Seo Thun is the widow of the deceased and his only dependant. The second plaintiff Ng Peng Hoe is a son of the deceased who was killed in a traffic accident at Ponggol Road, Singapore on the 20th January 1972. The defendant who was the driver of the motor-car which knocked down and killed the deceased admits liability. Special damages have been agreed between the parties at $1,500. To ascertain the amount of the general damages it has been agreed between the parties that the multiplier should be five years. The dispute is as to the amount which the deceased gave his widow every month and also as to whether on the facts of this case the widow is entitled to any damages at all in respect of her dependancy claim.

The deceased was 61 years old when he died. His widow the first plaintiff is now 64 years old. The deceased was a poultry farmer. He had a 99 year lease of a piece of land said to be about one acre in area which he used for farming and on which also stands the family house. The deceased reared hens, ducks and pigs. The widow of the deceased was the only witness who gave evidence. She stated that she had four sons and three daughters and all of them lived with her in the family house on their co-called farm. Some of the children contributed towards the running of the house. According to the widow her husband gave her out of his earnings as a farmer the sum of $150 p.m. She stated that this amount was for her personal expenses and that sometimes she used part of this money for household expenses.

As the defendant did not call any witness the evidence of the widow remains unchallenged. In the Statement of Claim the plaintiffs say that the deceased earned on the average a sum of $200 p.m.; that he used to give his widow the sum of $150 towards household expenses and that he used to have two meals at home which they have estimated to cost $50 p.m. Accordingly the sum claimed on behalf of the widow is only $100 p.m. Considering the widow's evidence in the light of the Statement of Claim it is clear that the widow's loss is $100 p.m. and as the parties have agreed that the multiplier should be five years the widow's dependancy claim amounts to the sum required to produce $100 p.m. for five years. According to the interest tables a sum of $5,196 invested at 5 per cent per annum will produce $100 p.m. for five years.

Counsel for the defendant has taken the point that the lease of the land on which the family house stands forms part of the estate of the deceased and has been valued for estate duty purposes at $50,000. He submits that as the widow will get a half share of the estate of the deceased she has derived a benefit of $25,000 as a result of the deceased's death and that when this benefit is set off against her loss it will be seen that she has in fact gained and not lost anything. Accordingly, counsel submits that she is entitled to nothing for loss of dependancy.

In my judgment the submission of counsel for the defendant is without any merit. In so far as the family house and the leasehold land on which it stands is concerned the widow's enjoyment of this benefit is the same before and after the death of the deceased and there is no financial gain. The widow and her children are still staying in the said family house. It has not been sold and if and when it is sold the widow will have to buy or rent other accommodation. No deduction therefore falls to be made for the dwelling house, furniture and other personal effects because the widow had the use of these things before the death of the deceased. The fact that she has now become part-owner of this property is not a benefit to be set off against the loss to her resulting from her husband's death. See *Heatley* v. *Steel Co. of Wales, Ltd.*,(1) and *Bishop* v. *Cunard White Star Co., Ltd.*(2)

The practice which prevailed some years ago of making automatic deductions for the value of the property inherited is falling into desuetude. As observed by Munkman (Fifth Edition, page 169) "the courts are now taking the common sense view that the family as a whole enjoyed the benefit of the father's property

before the death, and it is not some new and countervailing benefit which has come to them for the first time . . . " Thus Willmer L.J. said in *Daniels* v. *Jones*,[3] at page 31 that he did not agree that:

"the value of the estate is to be set off pound for pound against the loss of income as a matter of precise arithmetical calculation . . . the reality . . . is that (the family) were enjoying the benefit of it almost as much before the death of the deceased as they do now."

In *Kassam* v. *Kampala Aerated Water Co., Ltd.*,[4] where an Indian trader and his wife were both killed in the same accident so that all the property came to the children, the Privy Council has given an even stronger lead. Lord Guest said on the question of set-off:

"This is a highly speculative matter, and having regard to the anticipated savings which might reasonably have been expected to be made by the deceased if he had lived, no deduction ought to be made on the score of accelerated benefit, as these two figures very largely cancel out."

In the light of all these authorities I am unable to accept the submission that half of the value of the lease of the land on which the family house stands must be set off against the loss to the widow resulting from her husband's death.

Counsel for the plaintiffs submits that the claim of the plaintiffs is for damages for the estate of the deceased under section 8 of the Civil Law Act and also for the benefit of a dependant under section 12 of the said Act; that the widow of the deceased who is the only dependant is entitled to only half of the estate of the deceased and that therefore the full amount of the award under section 8 should not be deducted from the total of the awards under sections 8 and 12 of the said Act.

A claim for damages under section 8 of the Civil Law Act is equivalent to a claim in England under the Law Reform (Miscellaneous Provisions) Act, 1934, and a claim under section 12 of the Civil Law Act is equivalent to a claim under the Fatal Accidents Act, 1846, more commonly known as Lord Campbell's Act. And it is settled law that damages under the latter Act are limited to the actual financial loss sustained by reason of the death. The House of Lords decided in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*,[5] that under those two Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately. The damages to be awarded to a dependant of a deceased person under the Fatal Accidents Act must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measures of damages. Although both Acts deal with the same matter in the sense that both provide means whereby compensation may be recovered on death against a tortious killer, it must be clearly borne in mind that compensation under the Fatal Accidents Act passes to certain specified dependants whilst that under the Law Reform Act goes to the estate of the deceased person.

The position is the same under our law. The award under section 8 of the Civil Law Act goes to the estate of the deceased and that under section 12 to the dependants of the deceased. Where the widow and children of the deceased are the dependants and are also entitled to the whole of the estate of the deceased, the artificial result follows that damages under section 8 are no sooner awarded than they are taken away. To put it in another way, in such a situation the claim under section 8 is deemed to merge with that under section 12 of the Act with the result that the court assesses and awards damages only under section 12 of the Act. I was under the impression that that was the position in this case. It is not so.

The deceased died intestate. His widow will therefore get half of his estate and the other half will go to his seven children. It follows that the widow will be entitled to half of the compensation that is to be awarded under section 8 of the Act and the other half will go to her children.

As regards the claim under section 12 of the Act, the widow is the only dependant of the deceased. There is no dependancy claim by any of the children. Therefore the award under section 12 of the Act will go entirely to the widow. It is clear from *Davies'* case, *supra*, that the amount which must be deducted from the compensation to be awarded to this widow under section 12 is the amount of her share of the award under section 8 of the Act.

Accordingly I assess the damages to which the plaintiffs are entitled in this case as follows:

Special damages, as agreed	$1,500.00
Damages under section 12	5,196.00
Damages under section 8	3,000.00
	9,696.00
Less the widow's half share of the award under section 8	1,500.00
	$8,196.00

There will be judgment for the plaintiffs against the defendant in the sum of $8,196 and costs as taxed. The amount of the judgment is to be paid to the Public Trustee and there will be the usual order for payment of costs by the Public Trustee.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Laycock & Ong.*